

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

RICHARD WOLF GUTS,

Plaintiff,

vs.

COUWTY, CASE MANAGER AT USP  
TUCSON, AZ, INDIVIDUAL AND OFFICIAL  
CAPACITY; SHIED, LIEUTENANT AT USP  
TUCSON, AZ, INDIVIDUAL AND OFFICIAL  
CAPACITY; ATTORNEY GENERAL,  
SPRINGFIELD, MO AT FEDERAL DISTRICT  
COURT; FBOP FMC DOCTORS, PHDS AT  
SPRINGFIELD, MO, INDIVIDUAL AND  
OFFICIAL CAPACITY,

Defendants.

5:22-CV-05088-RAL

ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS AND REQUIRING  
PLAINTIFF TO PAY AN INTIAL PARTIAL  
FILING FEE

Plaintiff Richard Wolf Guts filed a pro se lawsuit under 28 U.S.C. § 1331 and Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). Doc. 1. Wolf Guts is an inmate at the Springfield Medical Center for Federal Inmates. See id. at 1. He filed a motion for leave to proceed in forma pauperis and provided the Court with his prisoner trust account report. Docs. 2, 3.

Under the Prison Litigation Reform Act, a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The Court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment

plan.” Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (per curiam) (alteration in original) (quoting McGore v. Wigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Wolf Guts reports an average monthly balance for the past six months in his prisoner trust account of \$658.50 and an average monthly deposit of \$1,500.00. Doc. 3 at 3. Based on this information, the Court grants Wolf Guts leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$300.00 (20 percent of his average monthly deposit). Wolf Guts must pay the initial partial filing fee of **\$300.00 by November 28, 2022**. His failure to pay the filing fee by November 28, 2022, will result in the dismissal without prejudice of his complaint.

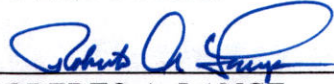
Accordingly, it is

ORDERED that Wolf Guts's motion for leave to proceed in forma pauperis, Doc. 2, is granted. Wolf Guts will make a payment of **\$300.00 by November 28, 2022**, made payable to the Clerk, U.S. District Court. If Wolf Guts does not pay the initial partial filing fee by November 25, 2022, his complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after Wolf Guts pays his initial partial filing fee. It is finally

ORDERED that the institution having custody of Wolf Guts is directed that whenever the amount in Wolf Guts's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Wolf Guts's trust account shall be forwarded to the U.S. District Court Clerk's Office under 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED October 25<sup>th</sup>, 2022.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE